

Bill to Special ORDINANCE NO. *S-17-03-03*
Special ordinance no S-60-77

AN ORDINANCE APPROVING THE FINANCING BY THE CITY OF FORT WAYNE OF ECONOMIC DEVELOPMENT FACILITIES AND APPROVING THE FORM AND TERMS OF A LOAN AGREEMENT, A GUARANTEE AGREEMENT, A TRUST INDENTURE AND BONDS; AUTHORIZING THE ISSUANCE OF \$1,000,000 INDUSTRIAL DEVELOPMENT REVENUE BONDS OF THE CITY OF FORT WAYNE, INDIANA, FOR THE PURPOSE OF LENDING THE PROCEEDS THEREOF TO NORTH AMERICAN PROPERTIES, INC. FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING AND INSTALLING CERTAIN ECONOMIC DEVELOPMENT FACILITIES LOCATED IN CLOSE PROXIMITY TO THE CITY; AUTHORIZING EXECUTION OF A LOAN AGREEMENT AND GUARANTEE AGREEMENT RELATING THERETO; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES; AND FOR OTHER PURPOSES.

WHEREAS the City of Fort Wayne, Indiana (hereinafter called the "City"), is a municipal corporation and political subdivision of the State of Indiana and by virtue of IC 1971, 10-6-4.5-1 through 18-6-4.5-29, inclusive, as amended (hereinafter called the "Act"), is authorized and empowered to make direct loans to users or developers of "economic development facilities" as defined in the Act for the purpose of financing the cost of the acquisition and construction of said economic development facilities to overcome insufficient employment opportunities and insufficient diversification of industry in the City and to promote the general economic welfare of the area in the City and to issue its industrial development revenue bonds to pay the costs of the acquisition or construction of such economic development facilities, including engineering, legal fees, and all other expenses related thereto during construction, including the costs of issuing the bonds and to secure said bonds by a trust indenture; and

WHEREAS North American Properties, Inc. (the "Corporation") is a corporation duly organized under the laws of the State of Indiana; and

*Approved as to form
& Legality
W. M. Walker
City Attorney*

WHEREAS the Common Council of the City (the "Common Council") has heretofore by Ordinance No. _____, pursuant to the Act, created the Fort Wayne Economic Development Commission (the "Commission") and the members of the Commission have been duly appointed and qualified pursuant to law, and the Commission has organized and undertaken the duties imposed upon it by the Act and has found by written resolution that because of existing insufficient employment opportunities and insufficient diversification of industry, the economic welfare of the City would be benefited by the acquisition or construction by the Corporation of said economic development facilities; and

WHEREAS the Commission has by such resolution approved a report estimating the public services which would be made necessary or desirable, the expense thereof, the number of jobs, the estimated payroll on account of the acquisition or construction of the economic development facilities and the cost of construction of the economic development facilities and has submitted such report to the Allen County Plan Commission; and

WHEREAS after giving notice in accordance with the Act, the Commission held a public hearing on the proposed financing and adopted a resolution finding the proposed financing complies with the Act, approving the financing and approving the form and terms of the industrial development revenue bonds proposed to be issued by the City in order to obtain funds with which to make a direct loan to the Corporation to pay a portion of the cost of the acquisition and construction of such facilities, the loan agreement, dated as of April 1, 1977, between the City and the Corporation (the "Loan Agreement"), the guarantee agreement (the "Guarantee Agreement") dated as of April 1, 1977 by and among the City, Fort Wayne National Bank (the "Trustee") and PepsiCo, Inc. (the "Guarantor") and

the Trust Indenture dated as of April 1, 1977 between the City and the Trustee (the "Indenture"), which resolution and other instruments and information pertaining to the proposed financing have been transmitted to the Common Council of the City by the Secretary of the Commission;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

Section 1. Public Benefits. The Common Council of the City hereby finds and determines that the real estate, interests in real estate, and other improvements thereon as described in the Exhibit to the Loan Agreement (the "Project") acquired or constructed with the proceeds of the loan made by the City to the Corporation from the proceeds of the Industrial Development Revenue Bonds herein authorized are "economic development facilities" as that phrase is used in the Act and that the utilization of the property in the construction and location of the Project is economically sound, will increase employment opportunities and increase diversification of industry in the City, will improve and promote the economic stability, development and welfare of the area in the City and will encourage and promote the expansion of industry, trade and commerce in the area in the City and the location of other new industries in such area.

Section 2. Findings. The Common Council hereby finds that this ordinance (the "Bond Ordinance") is of public benefit to the economic welfare of the City, by tending to overcome the deficiencies previously found to exist, to wit: insufficient employment opportunities and insufficient diversification of industry, and that such benefit is greater than the cost of public facilities (as that phrase is defined in the Act) which will be required by the Project. The Project will be of benefit to the economic welfare of the City and complies with the purposes and

provisions of the Act. The proposed financing involving the issuance of \$1,000,000 principal amount of industrial development revenue bonds of the City for the purpose of making a direct loan of the proceeds thereof to the Corporation to finance a portion of the cost of the Project is hereby approved and authorized.

Section 3. Authorization of \$1,000,000 Industrial Development Revenue Bonds. In order to obtain funds with which to make a direct loan to North American Properties, Inc. to pay a portion of the cost of acquiring and constructing the Project, there is hereby authorized to be issued, sold and delivered \$1,000,000 aggregate principal amount of City of Fort Wayne, Indiana Industrial Development Revenue Bonds, 1977 Series (PepsiCo, Inc. Project) (the "Bonds").

Section 4. Definitions. In addition to the words and terms defined in this Bond Ordinance, the words and terms used herein shall have the meanings set forth in the Indenture and the Loan Agreement unless the context or use indicates another or different meaning or intent and the form of the Bonds and the forms of the Loan Agreement, the Guarantee Agreement and the Trust Indenture, which forms are before this meeting, are hereby incorporated by reference in this Bond Ordinance and the Clerk is hereby directed to insert them into the minutes of the Common Council and to keep them on file.

Section 5. Terms for the Bonds. The total principal amount of Bonds that may be issued is hereby expressly limited to \$1,000,000; however additional Bonds may be issued as provided in the Indenture.

The Bonds shall be dated April 1, 1977, except as otherwise provided in the Indenture, shall bear interest payable April 1 and October 1 of each year at the rate of five and sixty-five hundredths per centum (5.65%) per annum

and shall mature on April 1, 1992. The Bonds shall be issued as fully registered Bonds without coupons, in the denomination of \$5,000 or integral multiples thereof.

The Bonds shall be executed on behalf of the City with the facsimile signature of the Mayor and attested with the manual signature of the City Clerk and shall have impressed, imprinted or otherwise reproduced thereon the corporate seal (or a facsimile thereof) of the City. Such facsimile on any Bonds shall have the same force and effect as if manually signed or impressed by such officers. The Bonds, together with interest thereon, shall be limited obligations of the City payable solely from the revenues and other amounts derived from the Loan Agreement (except to the extent paid out of moneys attributable to the Bond proceeds or the income from the temporary investment thereof) and shall be a valid claim of the respective holders thereof only against the Bond Fund referred to in the Indenture and other moneys held by the Trustee, which revenues and other amounts shall be pledged and secured under the Indenture for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of, premium, if any, and the interest on the Bonds, except as may be otherwise expressly authorized in the Indenture. The Bonds and the interest thereon shall never constitute a charge against the general credit or taxing power of the City. In case any officer whose signature or facsimile shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 6. Sale of the Bonds. The Mayor and Clerk of the City are hereby authorized and directed to sell the Bonds to or upon the order of Thornton, Farish & Gauntt, Inc., Montgomery, Alabama, at a price equal to par value of

the Bonds, plus accrued interest from April 1, 1977, to the date of delivery and payment therefor.

Section 7. Indenture. In order to secure the payment of the principal of and interest on the Bonds, the Mayor and Clerk shall execute, acknowledge and deliver in the name and on behalf of the City, the Indenture, in the form submitted to the Common Council, which is hereby approved in all respects; and the City Clerk is hereby directed to insert a copy thereof, in the form submitted to this meeting and approved hereby, in the minutes of this Common Council and to certify thereon that the same is the form of Indenture so submitted to this Common Council and approved by this Bond Ordinance and identified therein as the Indenture and to keep such Indenture on file. Said Indenture contains provisions authorized and permitted by the Act.

Section 8. Loan Agreement. In order to provide for repayments of the loan to North American Properties, Inc., sufficient in amount to pay the principal of and premium, if any, and interest on the Bonds, the Mayor and City Clerk shall execute, acknowledge and deliver in the name and on behalf of the City, the Loan Agreement, in the form submitted to this Common Council, which is hereby approved in all respects; and the Clerk is hereby directed to insert a copy thereof, in the form submitted to this meeting and approved hereby, in the minutes of this Common Council and to certify thereon that the same is the form of Loan Agreement submitted to this Common Council and approved by this Bond Ordinance and identified therein as the Loan Agreement and to keep such Loan Agreement on file. Said Loan Agreement contains provisions authorized and permitted by the Act.

Section 9. Guarantee Agreement. In order to provide assurances to the holders of the Bonds of the full

and prompt payment when due and at all times thereafter of each and all the payments provided to be paid by the Corporation to the City or the Trustee under the terms of the Loan Agreement, the Mayor and City Clerk shall execute, acknowledge and deliver in the name and on behalf of the City, the Guarantee Agreement, in the form submitted to this Common Council, which is hereby approved in all respects; and the City Clerk is hereby directed to insert a copy thereof, in the form submitted to this meeting and approved hereby, in the minutes of this Common Council and to certify thereon that the same is the form of Guarantee Agreement submitted to this Common Council and approved by this Bond Ordinance and identified therein as the Guarantee Agreement and to keep such Guarantee Agreement on file.

Section 10. Trustee. Fort Wayne National Bank, Fort Wayne, Indiana, is hereby designated Trustee under the Indenture and Paying Agent and Bond Registrar for the Bonds.

Section 11. Bond Purchase Agreement. The execution and delivery of the Bond Purchase Agreement providing for the sale of the Bonds, by and between the City and Thornton, Farish & Gauntt, Inc., as underwriter, a copy of which has been presented to the Common Council at this meeting and considered by its members and which is on file and of record with Clerk of the City, be and the same is hereby authorized. The Bond Purchase Agreement shall be in substantially the form as presented to the Common Council, subject to such minor changes, insertions or omissions as may be approved by the Mayor of the City and the execution of the Bond Purchase Agreement by the Mayor of the City as hereby authorized shall be conclusive evidence of any such approval.

Section 12. Official Statement. Execution of the Official Statement of the City relating to the Bonds, dated

March 8, 1977 (the "Official Statement") in final form be and the same is hereby authorized, and the Official Statement shall be in substantially the form as presented to the Common Council at this meeting and filed with the City Clerk, subject to such minor changes, insertions or omissions as may be approved by the Mayor of the City and the execution of said Official Statement by the Mayor of the City as hereby authorized shall be conclusive evidence of any such approval.

Section 13. General. The Mayor and City Clerk be and they are each hereby authorized and directed, in the name of and on behalf of the City to execute any and all instruments, perform any and all acts, approve any and all matters, and do any and all things deemed by them, or any of them, to be necessary or desirable in order to carry out the purposes of this Bond Ordinance (including the preambles hereto), the issuance and sale of the Bonds, the lending of the proceeds thereof to the Corporation pursuant to the Loan Agreement, the securing of the Bonds under the Indenture and guaranteeing the payments due under the Loan Agreement pursuant to the Guarantee Agreement.

Section 14. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon its adoption by the Common Council and approval by the Mayor.

Sponsored by:

James Seltzer
Councilman

Passed and adopted by the Common Council of the

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the day of _____, 1976, at _____ o'clock P.M., E.S.T.

DATE: _____

CITY CLERK

Read the third time in full and on motion by Steve, seconded by Hunter, and duly adopted, placed on its passage.

PASSED (Yea) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
<u>TOTAL VOTES</u>	<u>6</u>	<u> </u>	<u> </u>	<u>3</u>	<u> </u>
<u>BURNS</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>HINGA</u>	<u>A</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>HUNTER</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>MOSES</u>	<u>A</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>NUCKOLS</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHMIDT, D.</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHIMDT, V.</u>	<u>A</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>STIER</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>TALARICO</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

DATE: 3-8-77

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. 860-77 on the 8th day of March 1977.

ATTEST: (SEAL)

Charles W. Westerman

CITY CLERK

128

PRESIDING OFFICER

John Nuckles

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 9th day of March, 1977, at the hour of 2:00 o'clock P.M., E.S.T.

Charles W. Westerman

CITY CLERK

Approved and signed by me this 9th day of March, 1977, at the hour of 4:00 o'clock P.M., E.S.T.

Robert J. Danielsong

MAYOR

SUSPENSION OF RULES

BILL NO. 1-77-03-03

Councilman Stier, moved to suspend the rules on passage of BILL NO. 1-77-03-03, at this meeting of March 8, 1977, of the Common Council of the City of Fort Wayne, Indiana. Said motion was seconded by Councilman Hunter, and duly passed by unanimous vote of all legally elected members of the said Common Council.

The above BILL and Special ORDINANCE was accordingly placed on its passage.

DATE: 8-3-77

Charles W. Steierman Jr.
CITY CLERK

John Nuckols
PRESIDING OFFICER

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>BURNS</u>	✓				
<u>HINGA</u>	A			A	
<u>HUNTER</u>	✓				
<u>MOSES</u>	A			4	
<u>NUCKOLS</u>	✓				
<u>D. SCHMIDT</u>	✓				
<u>V. SCHMIDT</u>	A			A	
<u>STIER</u>	✓				
<u>TALARICO</u>	✓				

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana,
as _____

ATTEST:

(SEAL)

DATE: 3-8-77

Charles W. Steierman
CITY CLERK